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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/760,843	01/17/2001	Hironobu Ishida	2091-0230P-SP	4586

2292 7590 11/30/2006

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EXAMINER

DUONG, THOMAS

ART UNIT PAPER NUMBER

2145

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/760,843

Applicant(s)

ISHIDA, HIRONOBU

Examiner

Thomas Duong

Art Unit

2145

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-5, 7-13, 15-21, 23-27, and 33-66.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


JASON CARDONE
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Arguments presented are not persuasive. Please see the attachment sheet.

DETAILED ACTION

Response to Argument

1. The Applicants' arguments filed on November 8, 2006 have been fully considered, but they are not persuasive.
2. With regard to claims 1, 9, 17, and 35, the Applicants point out that,
 - *In other words, Wicklund recites that the transfer rate is assigned so that a certain number of packets, i.e. more than one, can be transferred within the time period. Stated another way, the transfer rate is set based on the amount of data and the amount of time.*
 - *This is in complete contrast with the feature of determining the number of image data sets to be sent based on the transfer rate and the permitted transfer time. It is clear that Wicklund cannot teach or suggest the above recited feature as the Examiner alleges.*

However, the Examiner finds that the Applicants' arguments are not persuasive because Wicklund discloses, *"said minimum packet transfer rate being used to determine a maximum value of the counting means, and hence the number of packets to be transferred on a selected logical channel during a predetermined time period, to allow more than one packet to be sorted into the first substructure for the logical channel code according to the bandwidth of the logical channel"* (Wicklund, col.11, lines 54-60). Hence, Wicklund teaches of determining the number of packets to be transferred based on the transfer rate and the predetermined time period. In addition, Wicklund discloses, *"it is still another object to provide a fast information*

packet switch supporting the service category Available Bit Rate ABR. In a preferred embodiment of the invention, a Minimum Cell Rate, MCR, can be guaranteed for ABR cells" (Wicklund, col.4, lines 17-20). Furthermore, Wicklund discloses, *"Available Bit Rate ABR, has recently been defined by the International Telecommunications Union ITU and the ATM-Forum as an ATM service category requiring an interaction between the network and the user. A user should be able to send data i.e. information packets or cells, at the maximum bit rate allowed by the network at any moment"* (Wicklund, col.1, lines 46-52). Wicklund also discloses, *"the invention according to the independent claims has the advantage of providing a packet transfer scheduler adapted to an information packet switch for scheduling transfer of information packets"* (Wicklund, col.4, lines 32-35). Hence, Wicklund teaches of utilizing the 'Minimum Cell Rate' (MCR) parameter to guarantee a minimum transfer rate for the Available Bit Rate (ABR) ATM traffic and not as a fixed constant transfer rate, which would refer to another type of ATM traffic (Constant Bit Rate (CBR), in particular). However, the purpose of the ATM ABR traffic type is to utilize the maximum bit rate allowed by the network at any moment. Hence, Wicklund teaches of utilizing the ABR traffic type to provide a packet transfer scheduler adapted to an information packet switch for scheduling transfer of information packets based on the maximum bit rate of the network at any moment.